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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 FIDELITY & GUARANTY LIFE  
12 INSURANCE CO.,

Plaintiff,

13 v.

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15 JAMES ALBERTSON,

Defendant.  
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CASE NO. 07-0045-BTM(LSP)

ORDER GRANTING IN PART AND  
DENYING IN PART  
PLAINTIFF'S MOTION TO  
COMPEL RESPONSES TO  
INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND REQUEST FOR  
SANCTIONS (38-1)

17 On November 9, 2007, Plaintiff Fidelity & Guaranty Life  
18 Insurance Co. (hereafter "Plaintiff") filed a Motion to Compel  
19 Responses to Special Interrogatories, Requests for Production of  
20 Documents and Request for Sanctions (hereafter "Motion"). On  
21 November 15, 2007, Defendant James Albertson (hereafter "Defendant")  
22 filed an Opposition to Plaintiff's Motion. On November 21, 2007,  
23 Plaintiff filed a Reply to Defendant's Opposition. The Court,  
24 having reviewed the Motion, Opposition and Reply, HEREBY GRANTS in  
25 part and DENIES in part Plaintiff's Motion.

26 Factual Background

27 On September 11, 2007, the Court convened an Early Neutral  
28 Evaluation Conference (hereafter "ENE") in this action. Settlement

1 was not reached at the ENE, so the Court issued an Order Setting  
2 Rule 26 Compliance (hereafter "Rule 26 Order") After the ENE, the  
3 Court instructed the parties to informally exchange the documents  
4 that support their respective positions. In the Rule 26 Order, the  
5 Court ordered that the Fed. R. Civ. P. 26(f) conference be completed  
6 by October 5, 2007 and a discovery plan be lodged with the Court on  
7 or before October 15, 2007. On October 15, 2007, Plaintiff filed a  
8 Joint Report of Conference of Counsel and Discovery Plan.

9 However, On April 10, 2007, counsel conducted the conference  
10 required by Fed. R. Civ. P. 26(f). On April 24, 2007, counsel  
11 served their initial disclosures pursuant to Fed. R. Civ. P. 26(a).  
12 (Declaration of Misty Murray in Support of Reply to Opposition to  
13 Plaintiff's Motion, Exs. A - D)

14 On June 12, 2007, Defendant began to conduct discovery.  
15 [Declaration of Misty Murray in Support of Reply to Opposition to  
16 Plaintiff's Motion, Ex. E (Notice of Deposition of Mark Hunton, set  
17 for July 27, 2007)]

18 On August 9, 2007, Plaintiff propounded on Defendant Special  
19 Interrogatories and Requests for Production of Documents (hereafter  
20 "discovery requests"). The responses to these discovery requests  
21 were due on September 11, 2007.

22 Defendant requested that extensions of time be granted to him  
23 in order to respond to the discovery requests. Plaintiff granted  
24 Defendant's requests for extensions of time to respond on at least  
25 three separate occasions. The extensions granted were to October 9,  
26 October 23, and November 13, 2007. To date, no responses to the  
27 discovery requests have been received by Plaintiff. Therefore,  
28 Plaintiff moves the Court to compel responses to the discovery

1 requests. Plaintiff also seeks its attorneys fees as sanctions for  
2 having to make its Motion.

3 Defendant argues that Plaintiff's Motion is improper until  
4 after the completion of the initial disclosures and a discovery plan  
5 has been developed. Therefore, Plaintiff's discovery requests and  
6 Motion to compel responses to them are premature. Defendant also  
7 seeks sanctions for having to oppose Plaintiff's Motion.

8 Analysis

9 A party may not seek discovery from any source before the  
10 parties have conferred as required by Fed R. Civ. P 26(f). Fed. R.  
11 Civ. P. 26(d)

12 On April 10, 2007, counsel conducted the conference mandated by  
13 Fed. R. Civ. P. 26(f).

14 Therefore, Plaintiff's discovery requests, propounded on  
15 August 9, 2007, were proper. While Defendant argues that  
16 Plaintiff's discovery requests and Motion to compel responses to  
17 them, were premature, it does not appear that his position in this  
18 regard was ever communicated to Plaintiff. Instead, on June 12,  
19 2007, approximately two months before Plaintiff's discovery requests  
20 were served, Defendant himself began to conduct discovery. The  
21 Court finds Defendant's argument to be disingenuous. As a result,  
22 Plaintiff's Motion is GRANTED.

23 Therefore, on or before December 11, 2007, Defendant shall  
24 respond to Plaintiff's Special Interrogatories without objections,  
25 other than objections based on attorney-client privilege and work  
26 product. Fed R. Civ. P. 33(b)(4).

27 With regard to Plaintiff's Requests for Production of  
28 Documents, on or before December 11, 2007, Defendant shall respond



1 Defendant's Request for Sanctions is DENIED.

2 IT IS SO ORDERED.

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6 DATED: November 26, 2007

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Hon. Leo S. Papas  
U.S. Magistrate Judge

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